

## UNITED STATES DISTRICT COURT

District of Massachusetts

UNITED STATES OF AMERICA  
V.

ev3, Inc.

**JUDGMENT IN A CRIMINAL CASE**  
(For Organizational Defendants)

CASE NUMBER: 1:18-cr-10461-JGD-1

Joshua S. Levy

Defendant Organization's Attorney

**THE DEFENDANT ORGANIZATION:**

- ☒ pleaded guilty to count(s) 1
- ☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- ☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The organizational defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC § 331(a)	Introduction of Adulterated Medical Devices into Interstate Commerce	12/31/2009	

The defendant organization is sentenced as provided in pages 2 through 4 of this judgment.

- ☐ The defendant organization has been found not guilty on count(s) \_\_\_\_\_
- ☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant organization must notify the United States attorney for this district within 30 days of any change of name, principal business address, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant organization must notify the court and United States attorney of material changes in economic circumstances.

Defendant Organization's  
Federal Employer I.D. No.: XXDefendant Organization's Principal Business Address:  
Plymouth, MN 554411/25/2019

Date of Imposition of Judgment

Signature of Judge

Judith G. Dein

Name of Judge

USMJ

Title of Judge

1/28/2019

Date

Defendant Organization's Mailing Address:

DEFENDANT ORGANIZATION: ev3, Inc.

CASE NUMBER: 1:18-cr-10461-JGD-1

**CRIMINAL MONETARY PENALTIES**

The defendant organization must pay the following total criminal monetary penalties under the schedule of payments on Sheet 4.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 125.00	\$ 11,900,000.00	\$ 0.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant organization shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant organization makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>

<b>TOTALS</b>	\$ 0.00	\$ 0.00
---------------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☒ The defendant organization shall pay interest on restitution or a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 4 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant organization does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT ORGANIZATION: ev3, Inc.  
CASE NUMBER: 1:18-cr-10461-JGD-1Judgment — Page 3 of 4**SCHEDULE OF PAYMENTS**

Having assessed the organization's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 125.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☒ in accordance with ☐ C or ☒ D below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C or ☐ D below); or
- C ☐ Payment in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☒ Special instructions regarding the payment of criminal monetary penalties:
- Payment of the fine shall be made in full within 14 days of sentencing.

All criminal monetary penalties are made to the clerk of the court.

The defendant organization shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant organization shall pay the cost of prosecution.
- ☐ The defendant organization shall pay the following court cost(s):
- ☒ The defendant organization shall forfeit the defendant organization's interest in the following property to the United States:
- \$6,000,000 to be paid within 14 days of sentencing

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT ORGANIZATION: ev3, Inc.  
CASE NUMBER: 1:18-cr-10461-JGD-1

Judgment — Page 4 of 4

### STATEMENT OF REASONS

☐ The court adopts the presentence report and guideline applications **WITHOUT CHANGE**.

**OR**

☐ The court adopts the presentence report guideline applications **BUT WITH THESE CHANGES**:

The Court finds that consistent with Federal Rule of Criminal Procedure 32(c)(1)(A)(ii), the Court is permitted to impose a sentence without the preparation of a Presentence Report since the Court finds that the information in the record is sufficient to enable it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553.

The organizational offense level/fine guidelines (USSG §§8C2.2 through 8C2.9) do not apply in this instance.

#### Guideline Range Determined by the Court:

☐ The defendant organization is a criminal purpose organization pursuant to U.S.S.G. §8C1.1.

**OR**

☐ The calculation of the guideline fine range is unnecessary because the defendant organization cannot pay restitution pursuant to U.S.S.G. §8C2.2(a).

**OR**

Total Offense Level: \_\_\_\_\_

Base Fine: \_\_\_\_\_

Total Culpability Score: \_\_\_\_\_

Fine Range: \$ \_\_\_\_\_ to \$ \_\_\_\_\_

☐ Disgorgement amount of \$ \_\_\_\_\_ is added to fine pursuant to U.S.S.G. §8C2.9.

☐ Fine offset amount of \$ \_\_\_\_\_ is subtracted from fine pursuant to U.S.S.G. §8C3.4.

☐ Fine waived or below the guideline range because of inability to pay pursuant to U.S.S.G. §8C.3.3.

#### RESTITUTION DETERMINATIONS

Total Amount of Restitution: \$ \_\_\_\_\_

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

☒ For offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

☐ Restitution is not ordered for other reasons:

☐ Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c) for the following reason(s):